

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN BLACKWELL,

Plaintiff-Appellant,

v

DEAN FRANCHI and DEBRA FRANCHI,

Defendant-Appellee.

FOR PUBLICATION
January 31, 2017

No. 328929
Oakland Circuit Court
LC No. 14-141562-NI

Advance Sheets Version

Before: K. F. KELLY, P.J., and GLEICHER and SHAPIRO, JJ.

K. F. KELLY, P.J. (*dissenting*).

I respectfully dissent. The relevant inquiry is not whether the *step* was open and obvious, but whether the *dark room* was open and obvious.

I agree with the majority that plaintiff was a licensee and that defendants had an obligation to warn her of hidden dangers. At the heart of this matter is what constituted the “danger” to plaintiff—the unexceptional eight-inch step or the dark room? At oral argument, plaintiff’s attorney conceded that there was absolutely nothing remarkable about the step. Counsel specifically acknowledged that it was a normal eight-inch step that, had the room been properly lit, would have been open and obvious. Plaintiff claims that the step was a danger because it was “unknown.” However, it was unknown because plaintiff purposefully entered a dark room to confront unidentified dangers. The danger was not the step, but the dark room itself, which could have contained a variety of other unspecified and commonplace “dangers,” such as laundry baskets or toys. The fact that the room was not lit was open and obvious. Plaintiff should have realized the danger posed by entering a dark and unknown room. I would affirm summary disposition in defendants’ favor.

/s/ Kirsten Frank Kelly